

COMMISSION FOR UNIFORM LEGISLATION
Responses to Sunset Public Hearing Questions
June 20, 2012

1. Provide a brief introduction to the commission, including information about its purpose, statutory duties, staff, and administrative attachment.

(a) Creation. The Commission for Uniform Legislation was created by the Acts of 1909, Chapter 86, now codified as Tenn. Code Ann. § 4-10-101, *et seq.* (the “Act”)

(b) Purpose. Its purpose is to promote uniformity of legislation among the various states and territories within the United States on all subjects where uniformity is desirable and practicable.

(c) Statutory Duties. Its statutory duties are: (i) to examine the subjects upon which uniformity of legislation in the various states and territories of the union is desirable, but which are outside the jurisdiction of the Congress of the United States; (ii) to confer upon these matters with the commissioners appointed by other states and territories for the same purpose; (iii) to consider and draft uniform laws to be submitted for approval and adoption by the several states and territories; and (iv) generally advise and recommend such other or further course of action as shall accomplish the purposes of the Act. Tennessee Commissioners carry out their duties by participating as members of the National Conference of Commissioners on Uniform State Laws (NCCUSL).

(d) Staff and Administrative Attachment. The Commission has no staff or administrative attachment. These functions are provided by the staff of the National Conference of Commissioners on Uniform State Laws in its office in Chicago, Illinois.

2. Provide a list of current members of the commission and describe how membership complies with Section 4-9-101, *Tennessee Code Annotated*. Who appoints members? Are there any vacancies on the commission? If so, what steps have been taken to fill the vacancies?

(a) The current members of the Commission and their dates of appointment are:

Charles A. Trost, Nashville, Tennessee, was appointed in 1997.

Effie V. Bean Cozart, Memphis, Tennessee, was appointed in 2008.

Robert M. Lloyd, Knoxville, Tennessee, was appointed in 2012.

Jess O. Hale, Jr., Hendersonville, Tennessee, serves as an associate member as the designee of Joe Barnes, Director of the Office of Legal Services, 2006.

George H. Buxton, III, Oak Ridge, Tennessee, was appointed as a Commissioner in 1986. In 2011 Commissioner Buxton elected to become a Life Member of the ULC and resigned his appointment.

(b) The membership of the Commission complies with the Act in that they are all lawyers, there are the full number authorized, and at least one member is over 60 years of age (Trost) and at least one member is a member of a racial minority (Cozart).

(c) The Governor is the appointing authority. There are no vacancies on the Commission.

3. Does the commission's membership include a female member? A member of a racial minority? A member who is 60 years of age or older?

The membership of the Commission includes a female member (Cozart), a member of a racial minority (Cozart), and a member who is more than 60 years old (Trost).

4. How many other states have similar commissions?

All 49 other states, as well as Puerto Rico, the Virgin Islands, and the District of Columbia, have similar commissions.

5. How many times did the commission meet in fiscal years 2011 and 2012, and how many members were present at each meeting?

The Commission met in 2011 and will meet in Nashville, Tennessee, in July 2012 in conjunction with the Annual Conference of the National Conference of Commissioners on Uniform State Laws ("NCCUSL"), also known as the Uniform Law Commission ("ULC"). All Commission members attended except former Commissioner George Buxton whose absence was excused due to health problems. Commissioner Buxton resigned in 2011 and his replacement, Commissioner Lloyd, was not appointed in time to attend the Annual Conference in 2011. All members have registered and plan to attend the meeting in 2012.

6. What per diem or travel reimbursement do members receive? How much was paid to commission members during fiscal years 2007 and 2008?

Commissioners are not paid per diem, but are reimbursed for travel expenses (transportation, meals, and lodging) incurred in attending the ULC Annual Conference. Reimbursements are administered through the Administrative Office of the Courts in accordance with the provisions of the comprehensive travel regulations as promulgated by the Department of Finance and Administration and approved by the Attorney General. Travel reimbursements paid to Commissioners and reimbursed by the Administrative Office of the Courts were¹:

2011	\$8,989.61	
2012	\$4,500.00	(budgeted)

All travel expenses incurred by Commissioners in attending ULC committee meetings are reimbursed directly by ULC.

¹ Commissioner Hale's expenses are paid by the Office of Legal Services and those of Commissioner Lloyd are to be paid by the UT College of Law.
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7. Is the commission subject to Sunshine law requirements (Section 8-44-101, *et seq.*) for public notice of meetings, prompt and full recording of minutes, and public access to minutes? If so, what procedures does the commission have for informing the public of its meetings and making its minutes available to the public?

The Commission is a “governing body” as defined in Tenn. Code Ann. § 8-44-102 and as such is subject to the Sunshine Law requirements. The meetings of the Commission take place at the Annual Conference of the ULC as to which notice is provided by information on the website of ULC (www.uniformlaws.org) which provides public information of the Annual Conference and all committee meetings. Minutes of the proceedings of the ULC and all committee meetings are compiled and maintained by the staff of the ULC and are available to the public. In addition, a verbatim transcript of all proceedings of the Annual Conference is prepared and is available to the public.

8. What were the commission’s revenues (by source) and expenditures (by object) for fiscal years 2011 and 2012?

The Commission does not have its own revenues. Tennessee, along with the 52 other jurisdictions that make up the ULC, contributes its proportionate share of the state dues. Dues paid by Tennessee to the ULC in 2011 and 2012 were in the amount of \$50,000 each year. (The total revenue budgeted by the ULC for FY 2011-12 is \$2,923,476 of which \$2,497,900 is budgeted from dues of state governments.)

9. Please detail the commission’s activities in carrying out each of the duties assigned to it in Section 4-9-102.

The members of the Commission carry out the duties assigned to them by Tenn. Code Ann. § 4-9-102 by conferring with Tennessee legislators and members of the Bar and the Tennessee Bar Association and by attending meetings of the ULC Committee on Scope and Program to discuss new subjects for drafting committees. By attending the Annual Conference of ULC, they conferred with other commissioners concerning proposed uniform legislation. They participated on various committees: **Cozart**—Deployed Parents Visitation and Custody Act; **Hale**—Unfaithful Presidential Electors Act, Legislative Liaison Committee, and Legislative Attorneys Committee; **Trost**—Protection of Charitable Organization Act, Decanting Trust Committee, Executive Committee, and as Treasurer of ULC. They recommended introduction in the General Assembly of newly approved Uniform Acts and appeared before relevant committees of the Legislature as requested to explain the Acts and respond to questions.

10. Does the commission submit an annual report to the General Assembly, as required by Section 4-9-103? Please provide a copy of the most recent report.

The Commission submits an Annual Report to the General Assembly after each Annual Conference. The 2011 Report is attached at **Exhibit A**.

11. Describe any items related to the commission that require legislative attention and your proposed legislative changes.

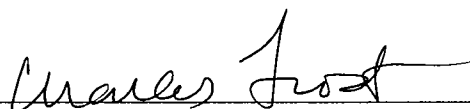
The Legislature may wish to consider whether members of the Commission are “officials of the legislative branch” as defined by Tenn. Code Ann. § 3-6-301(20) as was determined by the Tennessee Ethics Commission in Draft Advisory Opinion 08-XXX (August 12, 2008) and amend this definition to exclude members of the Commission if their inclusion was not intended. It would seem that inclusion of members of the Commission was not intended. The problem caused by their inclusion is that in carrying out the work required of Commissioners, information concerning ongoing drafting projects is sought and received from people all over the country and requiring their registration as “lobbyists” for Tennessee purposes just because there are Tennessee commissioners participating in the Annual Conference or attending meetings of drafting committees along with Commissioners from the other states, may impede the free flow and exchange of information and ideas necessary to do the work of the ULC. This situation is unique to Tennessee. The ULC has conflict of interest rules that require disclosure and non-participation in matters in which there is a conflict of interest. These rules of the Conference govern Commissioners in the conduct of their work and have proved to provide sufficient public safeguards.

12. Should the commission be continued? To what extent and in what ways would the absence of the commission affect the public health, safety, or welfare?

The Commission should be continued. The ULC is in its 120th year and Tennessee is in its 103rd year as a participant in the ULC. If the Commission were not to be continued, Tennessee would lose its voice in the preparation and promulgation of Uniform State Laws which significantly affect the public health, safety and welfare of the citizens of the State of Tennessee. A list of the Uniform Acts which have been adopted in Tennessee is attached hereto as **Exhibit B**.

June 20, 2012

Respectfully submitted,



Charles Trost, Chair
Tennessee Commission for Uniform Legislation

LIST OF UNIFORM AND MODEL ACTS ¹ ENACTED IN TENNESSEE:

(as of 6-6-12)

1. Absence of Evidence of Death and Absentees' Property (1939): *Enacted 1941*
2. Acknowledgments (1892): *Enacted 1919*
3. Adult Guardianship and Protective Proceedings Jurisdiction (2007): *Enacted 2010*
4. Aeronautics (1922): *Enacted 1923*
5. Air Licensing (1930): *Enacted 1931*
6. Anatomical Gift (1968): *Enacted 1969*
7. Revised Anatomical Gift (2006): *Enacted 2007*
8. Anti-Gambling (1952): *Enacted 1955*
9. Athlete Agents (2000): *Enacted 2001*
10. Attendance of Witnesses from Without a State in Criminal Proceedings, Act to Secure (1936): *Enacted 1939*
11. Business Corporation (1928): *Enacted 1929*
12. Business Records as Evidence (1936): *Enacted 1957*
13. Child Abduction Prevention (2006): *Enacted 2010*
14. Child Custody Jurisdiction (1968): *Enacted 1978*
15. Child Custody Jurisdiction and Enforcement (1997): *Enacted 1999*
16. Cold Storage of Certain Articles of Food, Act to Regulate (1914): *Enacted 1919*
17. Commercial Code (1951): *Enacted 1963*
18. Revised UCC Article 1 (2001): *Enacted 2008*
19. UCC Article 2A (1987)(1990): *Enacted 1993*
20. Revised UCC Articles 3 and 4 (1990): *Enacted 1995*
21. UCC Article 4A (1989): *Enacted 1991*
22. Revised UCC Article 5 (1995): *Enacted 1998*
23. UCC Article 6 (Repeal) (1989): *Enacted 1998*
24. Revised UCC Article 7 (2003): *Enacted 2008*
25. Amendments to UCC Article 8 (1977): *Enacted 1986*
26. Revised UCC Article 8 (1994): *Enacted 1997*
27. Amendments to UCC Article 9 (1972): *Enacted 1985*
28. Revised UCC Article 9 (1998): *Enacted 2000*
29. Amendments to Revised UCC Article 9 (2010): *Enacted 2012*
30. Common Trust Fund (1938)(1952): *Enacted 1953*
31. Contribution Among Tortfeasors (1939)(1955): *Enacted 1968*
32. Controlled Substances (1970): *Enacted 1971*
33. Crime Victims Reparations * (1973): *Enacted 1976*
34. Criminal Extradition (1936): *Enacted 1951*
35. Debt Management Services (2005): *Enacted 2009*
36. Declaratory Judgments (1922): *Enacted 1923*
37. Determination of Death (1980): *Enacted 1982*
38. Disposition of Unclaimed Property (1966): *Enacted 1978*
39. Division of Income for Tax Purposes (1957): *Enacted 19__*
40. Durable Power of Attorney (1979): *Enacted 1983*

¹ The National Conference of Commissioners on Uniform State Laws drafted each of these uniform and model acts.

41. Electronic Transactions (1999): *Enacted 2001*
42. Emergency Volunteer Health Practitioners (2006): *Enacted 2007*
43. Enforcement of Foreign Judgments (1964): *Enacted 1976*
44. Evidence, Rules of (1974): *Enacted 19__*
45. Execution of Wills (1940): *Enacted 1941*
46. Extradition of Persons of Unsound Mind (1916): *Enacted 1917*
47. Federal Tax Lien Registration (1926): *Enacted 1927*
48. Fiduciaries (1922): *Enacted 1953*
49. Flag (1917): *Enacted 1923*
50. Foreign Acknowledgments (1914): *Enacted 1921*
51. Foreign Depositions (1920): *Enacted 1923*
52. Fraudulent Conveyance (1918): *Enacted 1919*
53. Fraudulent Transfer (1984): *Enacted 2003*
54. Gifts to Minors (1956): *Enacted 1957*
55. Revised Gifts to Minors (1965): *Enacted 19__*
56. Interstate Arbitration of Death Taxes * (1943): *Enacted 1951*
57. Interstate Compromise of Death Taxes * (1943): *Enacted 1951*
58. Interstate Depositions and Discovery (2007): *Enacted 2008*
59. Interstate Family Support Act (1996): *Enacted 1998*
60. Amendments to Interstate Family Support (2008): *Enacted 2010*
61. Judicial Notice of Foreign Law (1936): *Enacted 1943*
62. Limited Partnership (1916): *Enacted 1919*
63. Revised Limited Partnership (1976): *Enacted 1988*
64. Amendments to Revised Limited Partnership (1985): *Enacted 1989*
65. Management of Institutional Funds (1972): *Enacted 1973*
66. Motor Vehicle Operators' and Chauffeurs' License (1926): *Enacted 1937*
67. Narcotic Drug (1932): *Enacted 1937*
68. Amendments to Narcotic Drug (1942)(1952): *Enacted 1963*
69. Negotiable Instruments Law (1896): *Enacted 1899*
70. Partnership (1914): *Enacted 1917*
71. Revised Partnership (1994)(1996): *Enacted 2001*
72. Principal and Income (1931): *Enacted 1955*
73. Revised Principal and Income (1997): *Enacted 2000*
74. Amendments to Revised Principal and Income (2008): *Enacted 2010*
75. Proof of Statutes (1920): *Enacted 1923*
76. Prudent Investor (1994): *Enacted 2002*
77. Prudent Management of Institutional Funds (2006): *Enacted 2007*
78. Real Property Electronic Recording (2005): *Enacted 2007*
79. Reciprocal Enforcement of Support (1950): *Enacted 1951*
80. Amendments to Reciprocal Enforcement of Support (1952)(1958): *Enacted 1959*
81. Residential Landlord and Tenant (1972): *Enacted 1975*
82. Sales (1906): *Enacted 1919*
83. Amendments to Sales (1922): *Enacted 1923*
84. Simplification of Fiduciary Security Transfers (1958): *Enacted 1959*
85. Simultaneous Death (1940): *Enacted 1941*
86. State Administrative Procedure (1946)(1961): *Enacted 1974*

87. Statutory Rule Against Perpetuities (1986)(1990): *Enacted 1994*
88. Stock Transfer (1909): *Enacted 1917*
89. TOD Security Registration (1989): *Enacted 1995*
90. Testamentary Additions to Trusts (1960): *Enacted 1961*
91. Trade Secrets (1979)(1985): *Enacted 2000*
92. Transfers to Minors (1983)(1986): *Enacted 1992*
93. Trust Code (2000): *Enacted 2004*
94. Trust Receipts (1933): *Enacted 1937*
95. Unsworn Foreign Declarations (2008): *Enacted 2010*
96. Veterans' Guardianship (1928): *Enacted 1929*
97. Revised Veterans' Guardianship (1942): *Enacted 1943*
98. Vital Statistics * (1942): *Enacted 1941 previous to adoption by Conference*
99. Warehouse Receipts (1906): *Enacted 1909*
100. Wills Act, Foreign Probated (1915): *Enacted 1919*

TENNESSEE COMMISSION FOR UNIFORM LEGISLATION ANNUAL REPORT 2011

To the Honorable Bill Haslam, Governor, the Honorable Ron Ramsey, Lt. Governor, and the Honorable Beth Harwell, Speaker of the House. The Tennessee Commissioners for Uniform Legislation respectfully submit this Annual Report pursuant to Tenn. Code Ann. § 4-9-103.

I. HISTORY AND PURPOSE OF THE TENNESSEE COMMISSION FOR UNIFORM LEGISLATION

History:

The National Conference of Commissioners on Uniform State Laws, also known as the Uniform Law Commission (“ULC”), was organized in Saratoga Springs, New York, in August 1892. In 1909 the State of Tennessee enacted Ch. 86 of the Acts of 1909, now codified at Tenn. Code Ann. § 4-9-101, *et seq.*, and the Tennessee Commissioners joined the Conference. There have been 120 Annual Conferences. The most recent was held July 7-13, 2011, in Vail, Colorado. The 121st Conference will be held in Nashville, Tennessee, July 13-19, 2012.

Purpose:

Organization of the Conference arose out of the concerns of State governments for the improvement of the law and for better interstate relationships. It is a unique State agency whose sole purpose has been, and remains, service to State governments through drafting uniform acts to promote uniformity in State laws on all subjects where uniformity is desirable and practicable. By doing so, the ULC promotes the interests of the States in maintaining the ideals of dual sovereignty and federalism and avoiding preemption by the Federal Government.

II. MEMBERSHIP IN THE ULC

Tennessee Commissioners for Uniform Legislation are also members of the ULC. The ULC is comprised of approximately 350 uniform law commissioners appointed from each of the 50 States, Puerto Rico, the Virgin Islands, and the District of Columbia. Each jurisdiction determines the method of appointment and number of commissioners appointed. Some States have as many as fourteen Commissioners. Tennessee has four, one of the smallest number. There is only one criteria for appointment—that Commissioners be members of the Bar. Some Commissioners are State legislators or other State officials, but most are practitioners, judges, or law professors. Commissioners receive no salaries or other compensation for their work with the ULC, but most are reimbursed for their expenses of attending meetings.

III. THE TENNESSEE UNIFORM LAW COMMISSIONERS

A. The Tennessee Commissioners are:

<u>Name</u>	<u>City</u>	<u>Date of Appointment</u>
Charles A. Trost	Nashville	1997
Effie V. Bean Cozart	Memphis	2008
Robert M. Lloyd	Knoxville	2012
Jess O. Hale, Jr., Associate Member ¹	Nashville	2006
George H. Buxton III, Life Member ²	Oak Ridge	1986

B. The Tennessee Commissioners who attended the 2011 ULC Annual Meeting were:

Charles A. Trost	Nashville
Effie V. Bean Cozart	Memphis
Jess O. Hale, Jr.	Nashville

C. Tennessee is represented on the following ULC committees:

1. Drafting Committees:

Uniform Deployed Parents Visitation and Custody Act (Cozart)
Uniform Protection of Charitable Organizations Act (Trost)
Uniform Faithful Presidential Electors Act (Hale)

2. Study Committee:

Uniform Decanting Trust Committee (Trost)

3. Executive Committee and Treasurer (Trost).

4. International Legal Developments (Trost).

5. Legislative Attorneys Committee (Hale).

6. Legislative Liaison Committee (Hale).

¹ Tennessee Code Annotated § 4-9-101(b) provides that the director of the office of legal services or the director's designee shall serve as an associate member of the TCUL. Mr. Hale is the director's designee.

² Under the Bylaws of the ULC Commissioners who have served for 20 years or more may on request be designed as Life Members, after serving more than 20 years Commissioner Buxton was designated a Life Member by the ULC. Commissioner Lloyd was appointed to the vacant position after the 2011 Conference.

IV. OPERATION OF THE ULC

The ULC convenes as a body in Conference in July each year for a period of seven days. The 2012 Annual Conference will be held in Nashville, Tennessee.³ Between annual meetings, drafting committees meet periodically to prepare the working drafts that are to be presented for review at the next annual meeting. At each Annual Conference, the draft acts prepared by the drafting committees are read aloud and debated by the Commissioners as a Committee of the whole. Each Act is considered over not less than two years. No Act becomes officially recognized as a Uniform Act until the National Conference is satisfied that it is ready for consideration in the State legislatures and it has been approved by a vote of the States, during which each State has one vote. No Uniform Act becomes effective as law until it has been adopted by the various State legislatures.

ULC is governed by its Executive Committee composed of the officers, certain ex-officio members, and members appointed by the President of the ULC. Various activities are conducted by the standing committees. For example, the Committee on Scope and Program considers all new subject areas proposed as Uniform Acts. The Legislative Committee superintends the relationships of the ULC to the State legislatures.

A staff of thirteen employees located in Chicago operates the national office of the ULC which handles meeting arrangements, publications, legislative liaison, and general administration for the ULC.

The ULC maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association, which contributes an amount each year to the operation of the ULC. Liaison is also maintained with the American Law Institute, the Council of State Governments, and the National Conference of State Legislatures on an on-going basis. Representatives of the Law Reform Conference of Canada and the Uniform Law Center of Mexico attend the annual conference. Liaison and activities may be conducted with other associations as interests and activities may require.

V. NEW UNIFORM ACTS ADOPTED BY THE CONFERENCE IN 2011

The New Acts adopted by the Conference in 2011 were:

- Uniform Electronic Legal Material Act
- Uniform Certificate of Title for Vessels Act
- Uniform Business Organizations Code
- Model Protection of Charitable Assets Act

³ The Annual Conference was held in Memphis in 1910 and in Chattanooga in 1929. The Nashville Convention Bureau estimates that the meeting of the Conference in Nashville in 2012 will have an economic impact of \$573,000.

VI. UNIFORM ACTS INTRODUCED IN TENNESSEE IN 2011

- Uniform Electronic Recordation of Custodial Interrogations:
HB 1207 / Introduced
- Uniform Military and Overseas Voters Act:
SB 1226 / HB 1150 / Introduced
- Uniform Law on Notarial Acts (Revised)
SB 76 / HB 534 / Introduced

VII. INTRODUCTIONS AND ENACTMENTS IN 2012

The following Uniform Acts were introduced and enacted by the Tennessee General Assembly in the legislative session which began in January 2012:

- Uniform Electronic Legal Material Act:
SB 2894 / HB 3656 / Introduced
- Uniform Electronic Recordation of Custodial Interrogations:
HB 572 / SB 511 / Introduced
- Uniform Military and Overseas Voters Act:
SB 1226 / HB 1150 / Introduced
- Uniform Law on Notarial Acts (Revised):
SB 76 / HB 534 / Introduced
- UCC Article 9 2010 Amendments:
SB 2931 / ENACTED

Other Acts remain under review by the appropriate committees of the Tennessee Bar Association whose activities are integral to the enactment process. Senator Doug Overbey and Representative Mike Stewart serve as unofficial legislative liaison working closely with the TBA and ULC on securing introduction of Acts deemed appropriate for Tennessee.

VIII. ENACTMENT RECORD TO DATE

Tennessee has adopted 100 Uniform and Model Acts prepared by the ULC.⁴ (*See attached list.*)

IX. FINANCIAL SUPPORT

The principal source of financial support of the ULC are the dues received from the 50 States, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.⁵ Tennessee's share paid for fiscal year 2011-2012 was \$50,000. The amount of dues for each State range from \$19,000 (Wyoming) to \$140,000 (California and New York). Tennessee has

⁴ In addition, a number of Acts have been revised or superceded, or have become obsolete over the years.

⁵ Contributions to the ULC by all states constitute 85% of the budgeted total revenue of \$2,923,476 for the current fiscal year (2012). Tennessee's share contributes 2%.

been a faithful contributor of its fair share to the work of the Conference. Its continued support is appreciated.

An additional source of support of the National Conference is the donated services of the Commissioners. The Conference estimates that each Commissioner devotes at least 100 hours each year to the work of the Conference. It has been conservatively estimated that the total value of the services donated by its 350 members exceeds \$10,000,000.



Charles A. Trost, Chair

cc: Honorable William Koch
AOC Liaison

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66. Motor Vehicle Operators' and Chauffeurs' License (1926): *Enacted 1937*
67. Narcotic Drug (1932): *Enacted 1937*
68. Amendments to Narcotic Drug (1942)(1952): *Enacted 1963*
69. Negotiable Instruments Law (1896): *Enacted 1899*
70. Partnership (1914): *Enacted 1917*
71. Revised Partnership (1994)(1996): *Enacted 2001*
72. Principal and Income (1931): *Enacted 1955*
73. Revised Principal and Income (1997): *Enacted 2000*
74. Amendments to Revised Principal and Income (2008): *Enacted 2010*
75. Proof of Statutes (1920): *Enacted 1923*
76. Prudent Investor (1994): *Enacted 2002*
77. Prudent Management of Institutional Funds (2006): *Enacted 2007*
78. Real Property Electronic Recording (2005): *Enacted 2007*
79. Reciprocal Enforcement of Support (1950): *Enacted 1951*
80. Amendments to Reciprocal Enforcement of Support (1952)(1958): *Enacted 1959*
81. Residential Landlord and Tenant (1972): *Enacted 1975*
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86. State Administrative Procedure (1946)(1961): *Enacted 1974*

87. Statutory Rule Against Perpetuities (1986)(1990): *Enacted 1994*
88. Stock Transfer (1909): *Enacted 1917*
89. TOD Security Registration (1989): *Enacted 1995*
90. Testamentary Additions to Trusts (1960): *Enacted 1961*
91. Trade Secrets (1979)(1985): *Enacted 2000*
92. Transfers to Minors (1983)(1986): *Enacted 1992*
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